IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2024

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.Nos.4726 & 4730 of 2022
and
W.M.P.Nos.4836, 4837, 4839 & 4840 of 2022

Redington (India) Limited,
Redington House, Centre Point,
Plot.No.11(SP), Thiru.Vi.Ka Industrial Estate,
Guindy, Chennai – 600 032.
Represented by its Whole-time Director,
Shri S.V.Krishnan ... Petitioner in both W.Ps.

Vs.

1. Additional/Joint/Deputy/Assistant Commissioner of Income Tax/Income Tax Officer,
National Faceless Assessment Centre,
Delhi.

2. Assistant Commissioner of Income Tax,
Circle 1, LTU,
121, M.G.Road, Nungambakkam,
Chennai – 600 034. ... Respondents in both W.Ps.

Prayer in 4726 of 2022: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari to call for the records of the case on the file of 2nd Respondent and quash the Impugned Notice u/s.148 of the Act dated 30.03.2021 for the Assessment Year 2015-2016 in DIN & Notice

No:ITBA/AST/S/148/2020-21/1031942480(1) and the consequential order dated 08.12.2021 in DIN & Letter No.ITBA/AST/F/17/2021-22/1037612313(1) issued by the 1st Respondent rejecting the objections raised by the Petitioner.

Prayer in 4730 of 2022: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari to call for the records of the case on the file of 2nd Respondent and quash the Impugned Notice u/s.148 of the Act dated 27.03.2021 for the Assessment Year 2016-2017 in DIN & Notice No:ITBA/AST/S/148/2020-21/1031825143(1) and the consequential order dated 08.12.2021 in DIN & Letter No.ITBA/AST/F/17/2021-22/1037612435(1) issued by the 1st Respondent rejecting the objections raised by the Petitioner.

For Petitioner :Mr.Vikram Vijayaraghavan for Mr.Subbaraya Aiyar Padmanabhan
(in both W.Ps.)

For Respondents : Mr.V.Mahalingam
Senior Standing Counsel
(in both W.Ps.)

COMMON ORDER

In both the Writ Petitions, the Petitioner has challenged the respective Assessment Orders issued by the Assistant Commissioner of Income Tax for the Assessment Years 2015-2016 and 2016-2017 dated 30.03.2021 and

27.03.2021.

2. Insofar as the Assessment Year 2015-2016 is concerned, a notice under Section 148 of the Income Tax Act, 1961 was issued on 30.03.2021, although the period of limitation now would be expired on 30.03.2021.

3. As far as the Assessment Year 2016-2017 is concerned, a notice has been issued within four (4) years. The Petitioner has challenged the respective notices and the Impugned Assessment Order dated 30.03.2021 and 27.03.2021 passed for the Assessment Year 2015-2016 and 2016-2017 on the strength of the decision decision of the Hon'ble Supreme Court in **Commissioner of Income Tax** vs**. Kelvinator of India Limited** (2010) 320 ITR 0561; (2010) 187 TAXMAN 0312. Wherein the Hon'ble Supreme Court taking note of the amendment to the provisions of the Income Tax Act, 1961 amendment to Section 147 of Income Tax Act, 1961 vide Direct Tax Laws (Amendment Act 1987) as observed as under:-

> *"4. On going through the changes, quoted above, made to s. 147 of the Act, we find that, prior to Direct Tax Laws (Amendment) Act, 1987, reopening could be done under above two conditions and fulfillment of the said conditions alone conferred jurisdiction on the AO to make a back assessment, but in s. 147 of the Act (w.e.f. 1st April, 1989),*

they are given a go by and only one condition has remained, viz., that where the AO has reason to believe that income has escaped assessment, confers jurisdiction to reopen the assessment. Therefore, post 1st April, 1989, power to reopen is much wider. However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, s. 147 would give arbitrary powers to the AO to reopen assessments on the basis of "mere change of opinion" which cannot be per se reason to reopen. We must also keep in mind the conceptual difference between power to review and power to reassess. The AO has no power to review, he has the power to reassess. But reassessment has to be based on fulfillment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of reopening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the AO. Hence, after 1st April, 1989, AO has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. Our view gets support from the changes made to s. 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words "reason to believe" but also inserted the word "opinion" in s.147 of the Act. However, on receipt of representation from the companies against omission of the words "reason to believe", Parliament re-introduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the AO. We quote hereinbelow the relevant portion of Circular No.549, dt. 31st Oct., 1989 [(1990) 82 CTR (St) 1], which reads as follows:

“7.2 Amendment made by the Amending Act, 1989, to re-introduce the expression 'reason to believe' in s. 147-A number of representations were received against the omission of the words 'reason to believe' from s. 147 and their substitution by the 'opinion' of the AO. It was pointed out that the meaning of the expression, 'reason to believe' had been explained in a number of Court rulings in the past and was well settled and its omission from s. 147 would give arbitrary powers to the AO to reopen past assessments on mere change of opinion. To allay these fears, the Amending Act, 1989, has again amended s. 147 to reintroduce the expression 'has reason to believe' in place of the words 'for reasons to be recorded by him in writing, is of the opinion'. Other provisions of the new s. 147, however, remain the same.”

4. The learned counsel for the Petitioner would submit that the assessment that were completed regularly under Section 143 of the Income Tax Act, 1961 preceded with all the informations that were required for complete assessment and the notes to account at Item No.26 to the Profit and Loss Account declared the same.

5. It is submitted that there were no tangible materials available for concluding that the Assessing Officer had no reasons to believe that income chargeable to tax are escaped assessment for any of the assessment years mentioned above as is contemplated under Section 147 of the Income Tax

Act, 1961 as it stood prior to 01.04.2021.

6. It is therefore submitted that the Impugned Orders are without jurisdiction and are liable to be quashed.

7. The learned counsel for the Petitioner has also drawn a latest decision of the Hon'ble Supreme Court in the case of **Assistant Commissioner of Income Tax** vs. **ICICI Securities Primary Dealership Ltd.,** [2012] 24 taxmann.com 310 (SC) / [2012] 348 ITR 299 (SC), wherein the Hon'ble Supreme Court accepted the contention of the assessee under similar circumstances.

8. In this connection, a reference was made to paragraph 7 of the Order which reads as under:-

> *"7. In the facts of the present case, there is nothing new which has come to the notice of the revenue. The accounts had been furnished by the Petitioner when called upon. Thereafter the assessment was completed under Section 143(3) of the Income Tax Act. Now, on a mere relook, the officer has come to the conclusion that*

the income has escaped assessment and he is of course justified in his analysis. In our view, this is not something which is permissible under the proviso to Section 147 of the Income Tax Act which speaks about a failure on the part of the assessee to make a proper return. In the present case, no such case is made out on the record."

9. It is submitted that in absence of any tangible material, the Impugned Orders are liable to be held without jurisdiction as there are no goods that were available for invoking Section 148 of the Income Tax Act, 1961.

10. The learned Senior Standing Counsel for the Respondents on the other hand would submit that tangible material can be the material that are already available, however not discussed at the time of original assessment under Section 143(3) of the Income Tax Act, 1961.

11. It is submitted that it could be also a fresh material which come to the light of the Department to conclude that the Officer had reasons to believe that income had escaped assessment so as to pass a Re-Assessment Order under Section 147 of the Income Tax Act, 1961 read with Section 148 of the Income Tax Act, 1961 as it stood prior to 01.04.2021.

12. It is submitted that statement that was given in notes to accounts at Item No.26 merely states the MTM net loss on undesignated/ineffective forward contracts amounting to Rs.17.68 Lakhs (Previous Year Rs.23.25 Lakhs) has been recognised in the Statement of Profit and Loss.

13. It is submitted that at the time of original assessment under Section 143(3) of the Income Tax Act, 1961 for the respective assessment years no opinion was formed by the Assessing Officer at the time of completion of assessment and therefore, the decision of the Hon'ble Supreme Court in **Commissioner of Income Tax** vs**. Kelvinator of India Limited** (2010) 320 ITR 0561; (2010) 187 TAXMAN 0312 will not come to the rescue of the Petitioner.

14. It is submitted that there is no change of opinion as no opinion was formed and that the Petitioner had also not assisted the Department. He would further contend that as per Explanation 1 to Section 147 of the Income Tax Act, 1961, merely production of Books of Accounts or other evidence before the Assessing Officer from which material evidence with due diligence has been discovered by the Assessing Officer will not necessarily

amount to disclosure. Therefore, it is submitted that the Writ Petition is devoid of merits and is liable to be dismissed.

15. Having considered the arguments advanced by the learned counsel for the Petitioner and the learned Senior Standing Counsel for the Respondents, I am of the view that the decision of the Hon'ble Supreme Court in **Commissioner of Income Tax** vs**. Kelvinator of India Limited** referred to *supra* squarely answers the issue against the Department.

16. Although tax and equity are strangers, equitable principles including principle of estoppel are being applied in taxing matters and courts have been consistently quashing orders where there are no additional or tangible materials are available with the Assessing Officer to re-open the assessment. The Courts have construed that such an attempt of the Assessing Officer to reopen the completed assessment was merely intended to review the assessment in view of the change of opinion.

17. In the light of the above discussion, these Writ Petitions are allowed. No cost. Consequently, connected Miscellaneous Petitions are closed.

21.08.2024

Index : Yes/No
Speaking/Non-speaking Order
Neutral Citation :Yes/No
rgm

C.SARAVANAN, J.

rgm

To

1. Additional/Joint/Deputy/Assistant Commissioner of Income Tax/Income Tax officer, National Faceless Assessment Centre, Delhi.

2. The Deputy Commissioner of Income Tax, Non Corp Circle 8(1), 121, Nungambakkam High Road, Chennai – 600 034.

W.P.Nos.4726 & 4730 of 2022
and
W.M.P.Nos.4836, 4837, 4839 & 4840 of 2022

21.08.2024